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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Keith E. Kropf
SERIAL NO.: 10/777,251
TITLE: DISPOSABLE DIAPER WITH SEALABLE
ENCLOSURE AND METHOD FOR SEALING AND
DISPOSING OF THE SAME
FILED: February 12, 2004
GROUP/A.U.: 3761
Confirmation No.: 5403
EXAMINER: Michael G. Bogart
Atty. Docket No.: P06716US0

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This is an appeal from the final rejection of claims
1-11 dated January 10, 2006.

I. Real Party In Interest:

The real party in interest of the instant appeal is
Keith E. Kropf and Andrew E. Kropf, having addresses of 1434
South 15th Avenue West, Newton, Iowa 50208.

II. Related Appeals and Interferences:

There are no related appeals or interferences.

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Timothy J. Zarley

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III. Status of the Claims:

Presently, claims 1-11 are pending in this application and appear in Appendix A of this brief. Claims 1-11 are identified as the appealed claims.

IV. Status of Amendments:

No amendments have been filed since the final rejection of January 10, 2006.

V. Summary of Claimed Subject Matter:

Independent claim 1 requires a disposable diaper 10 having a diaper body 12 with an outer surface 14. (Page 4, lines 2-8). Additionally, the diaper has a first layer 15 secured to the diaper body 12. (Page 4, lines 15-22).

The diaper 10 of claim 1 also has a second layer 16 having an interior surface 19 secured to the diaper body 12 to form a pocket 26 between the first and second layers 15, 16. (Page 4, line 23-page 5, line 10). Finally, the diaper 10 of claim 1 requires a means 30 for sealing the pocket for containing waste and odor on an exterior surface 17 of the second layer 16. (Page 5, lines 18-31).

Independent claim 6 requires a method for disposing of a diaper 10 wherein the steps comprise providing a diaper body 12 having an outer surface pocket 26 formed on the outer surface 14 of the diaper body 12. (Page 4, lines 15-22). The next step of claim 6 requires rolling the diaper body 12 inwardly towards the pocket 26. (Page 5, lines 18-26).

The next step of claim 6 requires inverting the pocket 26 to receive the diaper body 12. (Page 5, lines 21-27). The final step of independent claim 6 requires sealing the pocket 26 to enclose the diaper body 12 to form an air tight seal. (Page 5, lines 26-31).

Independent claim 7 requires a disposable diaper 10 comprising a diaper body 12 having an outer surface 14 and a layer 16 secured to the diaper body 12 to form a pocket 26 between the layer 16 and the outer surface 14. (Page 4, lines 15-26). The final limitation of independent claim 7 requires a means 28, 30 for sealing the pocket 26 for containing waste and odor such that when the pocket 26 is inverted the means 28, 30 for sealing forms an air tight seal. (Page 5, lines 18-31).

VI. Grounds of Rejection to be Reviewed on Appeal:

Claims 1-8, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ives (U.S. Pat. No. 6,454,748). Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ives.

VII. Argument:

The Examiner has rejected claims 1-8, 10 and 11 under 35 U.S.C. § 102(b) as being anticipated by Ives. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir.

1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 1 in part requires "a second layer having an interior surface secured to the diaper body" and also requires a means for sealing the pocket for contained waste and odor on an exterior surface of the second layer. The reference to Ives does not teach these limitations. Instead Ives teaches a layer 14 that has an interior surface that is secured to the diaper 10 and additionally has a strip 52 of an adhesive on that same interior surface. (See Col. 4, lines 39-40). Thus Ives does not teach a second layer that is both secured to the diaper body on an interior surface and has a sealing means on an exterior surface. By having the sealing means on the exterior surface the present invention is able to invert the diaper once rolled up so that the seal can be across the entire diaper forming an airtight seal to contain odor. Ives does not teach the containment of odor and instead teaches a seal that is tucked in and at the sides will allow odor to escape. Thus the present invention is an improvement upon the Ives reference. Consequently each and every limitation of amended claim 1 is not met and the anticipation rejection is considered overcome.

Independent claim 6 contains the limitation "inverting the pocket to receive the diaper body" and also requires "sealing the pocket to enclose the diaper body to form an airtight seal". As discussed above, the Ives reference does not teach inverting the pocket such that an airtight seal is formed and thus each and every limitation of amended claim 6 is not met and the anticipation rejection is considered overcome.

Independent claim 7 requires "a means for sealing the pocket for containing waste and odor such that when the pocket is inverted the means for sealing forms an airtight seal". Once again, as discussed above, this limitation is not taught within the Ives reference and the anticipation rejection is considered overcome. Additionally, claims 2-5 depend on claim 1 and claims 8-11 depend on claim 7 for at least this reason all pending claims are considered in allowable form.

The Examiner argues that Ives teaches a means 52 for sealing the pocket 48 for containing waste and odor such that when the pocket is inverted the means for sealing forms an air tight seal and cites column 4, lines 61-67 and Fig. 4. Additionally, the Examiner argues that sealing pocket 48 encloses diaper body 26 to form an air tight seal citing the zip lock reference from column 1, line 55-column 2, line 29 and again column 4, lines 61-67. Applicant disagrees with the Examiner's assessment. Specifically, the Ives reference does not teach inverting the diaper and instead teaches rolling it into itself as best seen in Fig. 4. (See also Col. 4, lines 39-48). Applicant asserts that because the diaper does not invert that at the very ends of the elongated slip 48 of Ives as most closely seen as numeral 48 in Fig. 4, that an air tight seal cannot be formed as Applicant asserts that

Ives does not teach sealing at this very corner spot wherein odor is released. Consequently, because of the inverted nature of the present invention, an air tight seal can be created providing an advantage over the prior art. Thus, at the very least, the Examiner has not met the initial *prima facie* burden of anticipation and each and every limitation of the claims is not taught by the Ives reference. Therefore, Applicant respectfully requests reversal of all claims.

A check in the amount of \$250 has been included with this appeal brief. All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJZ', with a long horizontal flourish extending to the left.

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TJZ/JLH/bjs

Attachment: Appendix

APPENDIX



VIII. Claims Appendix

1. (previously presented) A disposable diaper comprising:
a diaper body having an outer surface;
a first layer secured to the diaper body;
a second layer having an interior surface secured to the
diaper body to form a pocket between the first and
second layer; and
a means for sealing the pocket for containing waste and odor
on an exterior surface of the second layer.
2. (original) The disposable diaper of claim 1 wherein the
first layer and the second layer are waterproof.
3. (original) The disposable diaper of claim 1 wherein the
sealing means is a tape strip attached to a first surface of
the second layer.
4. (original) The disposable diaper of claim 1 wherein the
tape strip has a releasable protective facing.
5. (original) The disposable diaper of claim 1 wherein the
sealing means is an interlocking closure.
6. (previously presented) A method for disposing of a
diaper, comprising the steps of:
providing a diaper body having an outer surface pocket formed
on the outer surface of the diaper body;
rolling the diaper body inwardly toward the pocket;
inverting the pocket to receive the diaper body; and

sealing the pocket to enclose the diaper body to form an airtight seal.

7. (previously presented) A disposable diaper comprising:
a diaper body having an outer surface;
a layer secured to the diaper body to form a pocket between the layer and the outer surface; and
a means for sealing the pocket for containing waste and odor such that when the pocket is inverted the means for sealing forms an airtight seal.

8. (original) The disposable diaper of claim 7 wherein the layer is waterproof.

9. (original) The disposable diaper of claim 7 wherein the sealing means is a tape strip attached to a first surface of the layer.

10. (original) The disposable diaper of claim 9 wherein the tape strip has a releasable protective facing.

11. (original) The disposable diaper of claim 7 wherein the sealing means is an interlocking closure attached.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None